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Magalie Roman Salas
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Pursuant to Section 1.1206(b)(2) of the Commission's Rules, an original and three copies of this letter are being provided to the Secretary for inclusion in the records of the relevant proceedings. Please direct any questions or concerns to Cheryl A. Tritt.

Respectfully submitted,

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte:** Request of Lockheed Martin Corporation and Warburg, Pincus & Co. For Review of the Transfer of the Lockheed Martin Communications Industry Services Business From Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File No. 98-151

Dear Ms. Salas:

Lockheed Martin Corporation ("Lockheed Martin") and Warburg, Pincus & Co. ("Warburg Pincus")(collectively, "the Parties"), respond to two *ex parte* submissions filed on behalf of Mitretek Systems (Mitretek) in the above-referenced dockets on October 1, 1999: a letter and attached comments by Professor Lynn A. Stout ("Stout Letter");¹ and a letter from Mitretek counsel with an attached outline and various articles on the regulation of investment companies ("Logan Letter").²

In its filings, Mitretek focuses on Warburg Pincus' alleged control over: the independent directors on the NeuStar, Inc. ("NeuStar") Board and the trustees of the voting trust; how long they serve; and the selection of their successors.³ As the Parties have explained, however, Warburg Pincus' participation in these matters through their two representatives on the five-

¹ *Ex Parte* letter from Lynn A. Stout, Georgetown University Law Center, to Magalie Roman Salas, Secretary, Federal Communications Commission, attaching comments of Lynn A. Stout, CC Docket No. 92-237, NSD File No. 98-151 (dated Sept. 22, 1999; filed Oct. 1, 1999)("Stout Letter").

² *Ex Parte* letter from John E. Logan, Wallman Strategic Consulting, LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, with attachments (Sept. 30, 1999)("Logan Letter").

³ See comments attached to Stout Letter at 1-2 nn. 1-2.

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member NeuStar Board does not convey control over the Board. Warburg Pincus cannot unilaterally determine the selection of the independent directors, a successor Chairman of the NeuStar Board, or the trustees. The current CEO and Chairman of the NeuStar Board, Jeffrey Ganek, chose the initial independent directors, and they, along with Mr. Ganek or his successor, will nominate successor independent directors, who must be confirmed by the Board and approved by a majority of the voting shares, thus requiring the concurrence of the trustees. The other four members of the Board will choose any successor to Mr. Ganek. Similarly, the entire Board chooses and removes the trustees and their successors. Warburg Pincus' legitimate interest in such selections is only to ensure that those nominated and selected through these processes, which Warburg Pincus does not control, are competent.

The necessary concurrence of non-Warburg Pincus interests in these selections demonstrates that Warburg Pincus' involvement through its minority representation on the Board does not give it control. The non-Warburg Pincus directors will have the same "veto" over such matters that Warburg Pincus enjoys, and any exercise of such a veto by any director will certainly draw the attention of the North American Numbering Council and the Commission. Warburg Pincus clearly does not control, and will not control, the NeuStar Board or the trustees through its involvement in such selections.⁴

Mitretek concedes the appropriateness of Warburg Pincus involvement in such matters in the Stout Letter, which states that "it is permissible for Warburg Pincus to select who initially serves as an independent director and to set the independent directors' initial compensation"⁵ and "to select the initial trustees and their level of compensation...."⁶ Warburg Pincus has even less control over the selection of the initial independent directors and trustees than Mitretek concedes is appropriate, since it is Mr. Ganek -- not Warburg Pincus -- who has selected the initial independent directors, and it is the entire NeuStar Board -- not Warburg Pincus -- that will select the initial trustees. Thus, the Parties have provided for even greater independence in the selection of the initial independent directors and trustees than Mitretek would require.

Moreover, the independent directors and trustees are not subject to ongoing Warburg Pincus control. First, as to the trustees, since it is the entire Board that will determine how long

⁴ It should also be noted that Mitretek has given up its ill-conceived notion that the independent directors of NeuStar and the trustees of the independent voting trust owe fiduciary duties to Warburg Pincus in its other investment interests. As the Parties have explained, all of the directors of NeuStar, including the independent directors, owe a fiduciary duty solely to NeuStar and its shareholders, including all of the non-Warburg Pincus shareholders, and the trustees owe a fiduciary duty to the beneficial owners of the NeuStar shares held in the voting trust solely in their capacity as NeuStar shareholders. Mitretek does not challenge these conclusions in its October filings.

⁵ Comments attached to Stout Letter at 1 n. 1.

⁶ *Id.* at 2, n. 2.

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the trustees will serve and the selection of their successors, the conclusion that Warburg Pincus controls such matters requires the acceptance of Mitretek's untenable argument that Mr. Ganek is a Warburg Pincus nominee, thereby granting Warburg Pincus a majority of three directors. As the Parties have repeatedly explained, however, the Lockheed Martin Communications Industry Services ("CIS") business management team is being transferred to NeuStar intact. Mr. Ganek has headed CIS under Lockheed Martin's ownership as its Senior Vice President and Managing Director, and he will continue in that role as CEO and Chairman of NeuStar. He was therefore originally selected by Lockheed Martin, not Warburg Pincus, and has no familial or previous business ties to Warburg Pincus. Thus, there are three non-Warburg Pincus directors on the five-member NeuStar Board who can determine all of the matters relating to trustees.

Second, the independent directors and their successors are not subject to ongoing control by Warburg Pincus. Removal of a director will require a three-fourths vote of the voting shares, including those held in trust. Thus, the trustees, who are not controlled by Warburg Pincus, must concur in such removal. Moreover, since each of the initial independent directors will be involved in the selection of the other's successor for a full three-year term, and since such successor nominee must be approved by a majority of the voting shares, the successor independent directors also will not be controlled by Warburg Pincus. Furthermore, since at least one independent director must also concur in the selection of any successor to Mr. Ganek, any future CEO/Chairman of NeuStar will not be subject to Warburg Pincus control. Accordingly, there always will be a majority on the Board that is not controlled by Warburg Pincus.

Mitretek also continues to ignore the Commission's requirement of "particularized facts to overcome the presumption that ... directors will fulfill their fiduciary obligations" and, instead, continues to rely on "conclusory arguments" that the independent directors (and trustees) will be subject to undue influence from Warburg Pincus.⁷ Mitretek's argument is especially weak in these circumstances, since neither the independent directors nor the trustees will be permitted to have any ties to Warburg Pincus. Based on Mitretek's recent filings, its opposition should therefore be rejected and the Parties' proposed transfer of the CIS business should be approved without further delay.

⁷ *Lockheed Martin Corporation/Regulus, LLC, Application for Authority to Purchase and Hold Shares of Stock in COMSAT Corporation*, File No. SAT-ISP-19981016-00072 (released Sept. 15, 1999) at ¶ 37 & n. 89.